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CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1945.

No. 138.

FRANCIS DOLL,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

REPLY MEMORANDUM FOR PETITIONER.

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The respondent Commissioner of Internal Revenue has filed a "Memorandum For The Respondent," a copy of which we have just received.

In view of the inconsistent position of the respondent which he now takes in his Memorandum, from that expressed in his previous brief, petitioner is constrained to file this reply memorandum.

Respondent states that he has filed petition for certiorari to review the decision in Tower v. Commissioner, 148 Fed. 2d 388 (6th Cir.). He then states that the Court may wish to consider the question of certiorari in the

two cases together; and then he attempts to distinguish the two cases. His distinctions seem extremely tenuous. The only real distinction is the amount involved, as the same fundamental question of taxability in family partnership is in both cases.

Respondent then states that certiorari is unnecessary in the instant case, but that he "is not averse to this Court's considering additional phases of the family partnership problem through granting certiorari in this case if the petition in the Tower case should be granted, since family partnerships generally present an important new field of tax avoidance."

This amounts to a tacit admission that the question involved should be clarified and ruled upon by this Court—contrary to the position which he took in his previous brief filed in opposition to the granting of the writ.

We understand that a petition for certiorari has been filed by the taxpayer to review the decision of the Circuit Court of Appeals for the Third Circuit, in Lusthaus v. Commissioner, 149 Fed. 2d 232, on the same question. In that case there was a vigorous dissenting opinion by Judge Fake in favor of the taxpayer. In the Tower case there was a strong dissenting opinion by Judge Martin in favor of the Commissioner. In the instant case all three Judges concurred.

Such difference of expressed opinion on the same question in three circuits, each approaching and treating the question in a different manner, corroborates the admission of the Commissioner that there exists a problem involving family partnerships that should be clarified and authoritatively ruled upon by this Court through granting of the writ in this and the other cases.

One of the leading taxation analysts and reporting authorities in the United States, Prentice-Hall, in their

Weekly Letter of July 16th, 1945, has this comment on the instant case:

> "Watch for these Supreme Court decisions:
>
> "If the Supreme Court agrees to review the following cases in which the defeated parties have applied for writs of certiorari, it may settle three questions important to taxpayers generally.
>
> "1. Doll v. Commissioner, 8th Cir., 4/12/45: Question presented was whether a family partnership should be recognized for Federal tax purposes. Circuit Court held in favor of Government."

The above quotation emphasizes the importance of the question that should be decided, which is apparent to the Commissioner, the Solicitor General, and the Attorney General, as well as to petitioner and his counsel.

Respectfully submitted,

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Counsel for Petitioner.

MALCOLM I. FRANK,
Associate Counsel.